

CHILD AND ADULT CARE FOOD PROGRAM

Hearing Procedures

The following hearing procedures established in accordance with Section 226.6(k) of the Child and Adult Care Food Program regulations will be followed by an institution requesting a review of a denial of a new or renewing institution's application for participation, a denial of an application submitted by a sponsoring organization on behalf of a facility, a proposed termination of an institution's agreement due to health or safety violations, a proposed disqualification of a responsible principal or responsible individual due to health or safety violations, a suspension of an institution's participation because of health or safety violations or submission of a false or fraudulent claim, a denial of an agency's application for start-up or expansion payments, a denial of a request for an advance payment, a recovery of all or part of an advance in excess of the claim for the applicable period, a denial of all or a part of an institution's claim for reimbursement unless the denial is based on a late claim submission, a decision by the DPI not to forward to FNS an exception request by an institution for payment of a late claim, or a request for an upward adjustment to a claim, a demand for the remittance of an overpayment, and any other action of the DPI affecting an agency's participation or its claim for reimbursement. An agency cannot appeal a FNS decision on claim deadline exceptions and requests for upward adjustments to a claim, a determination of seriously deficient, a disqualification and placement on State agency list and National disqualified list, and a Termination of a participating institution's agreement.

Procedure:

- 1) The institution shall be advised in writing of the action being proposed or taken and the basis for the action. The notice will include a statement indicating that the institution has the right to appeal the action. The notice of action shall be sent by certified mail, by facsimile, or by email, and is considered to be received by the institution or day care home when it is delivered, sent by facsimile, or sent by email, whichever occurs first. If the notice is undeliverable, it is considered to be received by the institution, responsible principal or responsible individual, or day care home five days after being sent to the addressee's last known mailing address, facsimile number, or email address.
- 2) Any written request for review shall be submitted by the appellant and post marked not later than 15 calendar days (10 calendar days for suspension) from the date the appellant received the notice of action. The request for review will not be accepted by e-mail or facsimile. The State will acknowledge the receipt of the request for appeal within 10 calendar days from the date of the department receipt of the request. The written request for review must be addressed to: **Cari Ann Muggenburg, Wisconsin Department of Public Instruction, Community Nutrition Program, P.O. Box 7841, Madison, WI 53707-7841;**
- 3) The appellant may refute the charges contained in the notice of action in person and by written documentation to the review official.
 - a) In order to be considered, written documentation must be filed with the review official not later than 30 calendar days after the appellant received the notice of action.
 - b) Only if the appellant specifically requests a hearing in the letter of request for review, will the review official hold a hearing in addition to, or in lieu of, a review of written information submitted by the appellant.

- c) Any request for review must specify who is filing the request. For example, request is filed on behalf of *[institution name]*, and *[Authorized Representative name]* and *[Owner or Board President Name]*.
 - d) Failure of the appellant institution's representative to appear at a scheduled hearing shall constitute the appellant institution's waiver of the right to a personal appearance before the review official, unless the review official agrees to reschedule the hearing.
 - e) A representative of the State Agency shall be allowed to attend the hearing to respond to the appellant's testimony and to answer questions posed by the review official.
 - f) The appellant may retain legal counsel or may be represented by another person.
- 4) If the appellant has requested a hearing, the appellant shall be provided with at least 10 calendar days advance written notice of the time and place of the hearing. Notice may be provided by e-mail.
 - 5) Any information on which the State Agency's action was based shall be available to the appellant for inspection from the date of receipt of the request for review.
 - 6) The review official shall be an independent and impartial official other than, and not accountable to, any person authorized to make decisions that are subject to appeal under the provisions of this section.
 - 7) The review official shall make a determination based on information provided by the State Agency and the appellant and on Program regulations.
 - 8) Within 60 calendar days of the State Agency's receipt of the request for review, the review official shall inform the State Agency and the appellant of the determination of the review.
 - 9) The State Agency's action shall remain in effect during the appeal process. However, participating institutions and facilities may continue to operate under the Program during an appeal of termination unless the action is based on imminent dangers to the health or welfare of children. If the institution or facility has been terminated for this reason, the State Agency shall so specify in its notice of action. Institutions electing to continue operating while appealing terminations shall not be reimbursed for any meals served during the period of the appeal if the State Agency's action is upheld.
 - 10) The determination by the State review official is the final administrative determination to be afforded to the appellant.